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09/975,698	10/10/2001	Peter J. Honeyman	DWR:187270-2	9196

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EXAMINER

MICHENER, JENNIFER KOLB

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/975,698

Applicant(s)

HONEYMAN, PETER J.

Examiner

Jennifer Kolb Michener

Art Unit

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-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-14, 19 and 24 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 15-18 drawn to an invention nonelected with traverse in Paper No. 2. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejections of claims 8, 10, and 13 have been withdrawn for those reasons outlined below. The rejection of claim 9 has been maintained for those reasons outlined below.

The rejection of claim 1 has been added, as necessitated by amendment.

In light of Applicant's remarks and definitions, the rejection of claim 8 regarding "rubber like" has been withdrawn.

In light of Applicant's arguments, the trademark rejections of claims 9 and 13 have been withdrawn.

The individual rejection of claim 9 is maintained.

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This rejection was not addressed by Applicant in either the arguments section or by amendment.

As written, step (h) claims any combination of specific copolymers, vulcanizing agent, antioxidant, stabilizer, and specific PLASTI DIP products. This claim therefore is inclusive of the combination of, for example, only antioxidant and stabilizer, said combination not capable of acting as the saturation mix of Applicant. Claim 9 does not make clear what elements are required by the combination and, as outlined in Paper 2, the claim is inclusive of combinations not actually disclosed by Applicant. Perhaps Applicant intended to use the phrase "a combination of the following".

Based on Applicant's amendments, the combination rejection of claims 8-10 has been withdrawn.

Based on Applicant's amendments, the following new rejection is made:

3. The term "extreme flexibility" in claim 1 is a relative term which renders the claim indefinite. The term "extreme" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "extreme" cannot be quantified, therefore the scope of the claim cannot be ascertained for the comparison of flexibility requirements between the claim and the prior art. For the purposes of examination, Examiner has interpreted the phrase to require flexibility in the finished product.

***Claim Rejections - 35 USC § 102***

4. Claims 1-4 6-8, 10-14, 19, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fessenden (US 2,658,836).

Examiner maintains the rejections of claims 1-4, 6-8, and 10-14.

Examiner withdraws the rejection of claim 9.

Examiner adds newly-added claims 19 and 24 to this rejection for those reasons outlined below.

Regarding the newly-added limitations in claim 1, Examiner notes that Fessenden requires flexibility (col. 11, line 10). Additionally, there is no teaching, mention, or suggestion in Fessenden of chemical cross-linking, thus inherently teaching the absence of such cross-linking, as required by the claim. Because Fessenden meets all the limitations of claim 1, the reference will inherently obtain the same flexibility and lack of cross-linking of Applicant. If there is some difference between the outcome of Fessenden's method and that of Applicant's, it must be due to some process limitation not present in the claim.

As to newly-added claims 19 and 24, Examiner notes the requirement for the saturation mix to be the silicone styrene elastomer resin mix, instead of the coating-mix. Examiner notes that Fessenden teaches an embodiment in which his styrene-organic silicon resin mix is used without the first coating (col. 11, lines 46-47). Therefore the elastomer mix of Fessenden would act as Applicant's saturation mix, as required by the claims.

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Examiner preemptively addresses the fact that Fessenden's elastomer mix (defined as polymers with elasticity similar to rubber, which the chemicals of Fessenden meet) will inherently saturate the substrate in the same manner as Applicant because the coating substances and substrates of Fessenden are the same as Applicant's.

***Claim Rejections - 35 USC § 103***

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fessenden in view of Waszkiewicz (US 3,563,780).

Examiner maintains the rejection.

6. Claims 8, 10, 19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fessenden in view of Romero-Sierra et al. (US 4,272,571).

The rejection of claim 9 has been withdrawn.

The rejection is maintained for claims 8 and 10, although slightly reconfigured as necessitated by Applicant's amendments to the claim dependency, as an alternative to the 102 rejection presented above.

Newly-added claims 19 and 24 are added to this rejection as an alternative to the 102 rejection presented above.

Examiner notes that Fessenden teaches that which is disclosed above and in the previous office action, specifically a mixture made from a combination of polymers, such as polystyrene and organic silicon resin.

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Fessenden does not specifically state that the "organic silicon resin" is "silicone", however, the position relied upon, above, is that the term "silicone" is the broad term for a polymer (i.e., resin) containing silicon and an organic group. While it is Examiner's position that Fessenden's "organic silicon resin" is one and the same as Applicant's silicone, which is an organic silicon-containing resin, Examiner cites Romero-Sierra to cite the same.

Romero-Sierra teaches, throughout, the use of silicone for preserving plants.

Since Fessenden teaches organic silicon resin and Romero-Sierra teaches silicone, meaning an organic silicon-containing resin, Romero-Sierra would have reasonably suggested the use of silicone as the organic silicon-containing resin of Fessenden. It would have been obvious to one of ordinary skill in the art to use the teachings of Romero-Sierra in the method of Fessenden to provide Fessenden with a specific, suitable chemical name as the organic silicon-based resin.

Further, Romero-Sierra teaches the use of xylene solvent as compatible with the specific siloxane to be used in Fessenden's method, as required by claim 10 (b).

#### ***Allowable Subject Matter***

7. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and correcting the 112, 2<sup>nd</sup> problem to delete step (h) or require the presence of all components mentioned in step (h).

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8. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 21-23 are allowed for the same reason as the art rejection of claim 9 has been withdrawn, namely that in light of Applicant's arguments, the prior art of record fails to teach the copolymerization of the disclosed polymers for use in preserving plants.

### ***Response to Arguments***

10. Applicant's arguments filed 8/7/2003 regarding the Romero-Sierra reference have been fully considered but they are not persuasive.

Examiner believes that many of Applicant's arguments have been addressed within the new rejections, as necessitated by amendment. Additionally, many of the arguments have led to withdrawal of rejections, as specifically outlined, when appropriate, above. The remaining argument concerns the Romera-Sierra reference.

Applicant argues that Romero-Sierra requires many additional components, not required by Applicant.

Examiner notes that she has relied on this reference solely for a teaching that silicone is the silicon-containing resin taught by the Fessenden reference and suitable for use on preserved plants.



***Conclusion***

11. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kolb Michener whose telephone number is 703-306-5462. The examiner can normally be reached on Monday through Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on 703-308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jennifer Kolb Michener  
October 16, 2003



SHRIVE P. BECK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700